

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO**

Ohio A. Phillip Randolph Institute, et al.,

Plaintiffs,

v.

Kasich, et al.,

Defendants.

Civil Case No. 18-cv-00357

**CORRECTED AFFIDAVIT OF NON-PARTY ADAM KINCAID
IN SUPPORT OF HIS ASSERTION OF FIRST AMENDMENT PRIVILEGE**

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I, Adam Kincaid, being competent to testify, make this following declaration pursuant to 28 U.S.C. § 1746.

1. I am a resident of Falls Church, Virginia in Fairfax County. I am over 18 years of age, and my statements herein are based on my personal knowledge.
2. Plaintiffs in the above captioned litigation served me with two subpoenas for documents. Plaintiffs have also served me with a deposition subpoena.
3. The first subpoena for documents was served on me on June 28, 2018. I timely served objections that included assertions of First Amendment privilege, on July 12, 2018. (Ex. A to this Declaration). I have personally reviewed this subpoena.
4. The second subpoena for documents was served on me on July 2, 2018. I timely served objections that included assertions of First Amendment privilege on July 16, 2018. (Ex. B to this Declaration). I have personally reviewed this subpoena.
5. Plaintiffs' notice of deposition subpoena was served on my counsel via email on Friday September 21, 2018. The notice of deposition has scheduled the deposition for November 27, 2018. (Ex. C to this Declaration). I have personally reviewed this subpoena.
6. I am currently the executive director of the National Republican Redistricting Trust ("NRRT") and Fair Lines America, Inc.
7. The NRRT was established in September of 2017 to act as a hub for the coordination and collaboration of the Republican Party's 2020 redistricting efforts. NRRT will provide advice, litigation support, data collection, and data analysis throughout the 2020 redistricting cycle. Due to the nature of the work the NRRT does and will continue to do it stands in direct opposition to efforts of former President Barack Obama and former Attorney General Eric Holder's efforts at the National Democratic Redistricting Committee.
8. Fair Lines America is a 501(c)(4) entity that is also involved in data collection and analysis. Fair Lines America will also be involved in litigation and briefing for upcoming redistricting cases.
9. From 2011-2012, I served as the Redistricting Coordinator for the National Republican Congressional Committee ("NRCC"), a national party committee under 52 U.S.C. § 30101(14) and 11 C.F.R. § 100.13. The NRCC "supports the election of Republicans to the House through direct financial contributions to candidates and Republican Party organizations; technical and research assistance to Republican candidates and Party

organizations; voter registration, education and turnout programs; and other Party-building activities.”¹

10. I have never been employed or served as an independent contractor for the State of Ohio nor have I ever been employed or served as independent contractor for any state or the federal government.
11. When I was employed at the NRCC, I did not have any independent contracts.
12. As stated above, the NRCC’s primary function is to help elect Republicans to the House of Representatives. Importantly, to provide beneficial assistance to these Republican Members, the NRCC must know the contours of the Members’ districts.
13. Accordingly, to provide beneficial assistance to congressional members, and as part of my normal duties as Redistricting Coordinator, I conducted, among other things, analyses of draft redistricting maps and final redistricting maps.

DESCRIPTION OF DOCUMENTS IN MY POSSESSION

14. In my possession, I have four categories of documents:
 - a. Analyses of Draft Ohio Congressional Maps and The Final Ohio Congressional Map
 - Analyses of Old Map: Doc Nos. 9, 74-76
 - Analyses of Final New Map: Doc. Nos. 16, 18-73
 - b. State-by-State summaries of the progress and analysis of the nationwide 2010 redistricting cycle

Doc Nos. 6, 12, 15
 - c. State-by-State summaries of and analysis of the results of the nationwide 2010 redistricting cycle

Doc Nos. 1, 2, 3, 4, 5, 13,
 - d. NRCC Redistricting Meeting Schedules
Doc. No. 11

¹ See <https://www.nrcc.org/about/> (last visited September 26, 2018).

FIRST AMENDMENT INFRINGEMENT

15. As to categories a, b, c, and d, to the best of my recollection, the documents that I have in my possession, I communicated and disseminated only within the NRCC and to NRCC members. These documents were communicated internally for the development of strategies on behalf of NRCC Members.
16. To the best of my recollection, I never sent any of the documents that I have in my possession to any Ohio legislator or Ohio legislative staffer.
17. These documents contain my mental impressions and analyses and were intended for use to develop strategies to assist Republican House Members win elections.
18. It is my considered judgment that if I were required to disclose these communications to the Plaintiffs, it would both drastically and adversely affect how I communicate internally in the future. This includes drastically and adversely affecting my communications with the NRCC, as well as NRRT, and Fair Lines America, particularly since the main function of the NRRT and Fair Lines America is to conduct data analysis and collection.
19. The Plaintiffs would be able to obtain internal and confidential communications concerning the development of strategy. This would deter full and honest discussion within the NRCC, NRRT, and Fair Lines America about redistricting, a primary concern for all three organizations. This will substantially hamper our ability to conduct our internal affairs including the hiring of the brightest data analysts and communicating with each other in developing our analyses.


It will also deter our ability to retain talent at the NRRT and Fair Lines America as individuals would know that their draft analyses and internal correspondences and mental impressions were subject to forced disclosure.
20. These analyses were also used to develop charts and PowerPoint presentations that I made to NRCC staff and to NRCC Members. These PowerPoint presentations are also in my possession. They contain my mental impressions.
21. Plaintiffs are represented by the ACLU and Covington and Burling. Plaintiffs also include three Democratic Party organizations, the Northeast Ohio Young Black Democrats, Hamilton County Young Democrats, The Ohio State University College Democrats.
22. One of the partners at Covington and Burling is Eric Holder, Chairman of the National Democratic Redistricting Committee. As is evident here, Covington and Burling will

likely continue to be legal, practical, and political adversaries in redistricting to the NRRT, NRCC, and the Fair Lines America through the next round of redistricting.

23. Additionally, the Northeast Ohio Young Black Democrats is an organization that supports the Democratic Party and thus is opposed to NRRT, NRCC, and Fair Lines America. This is demonstrated through their declaration that “The future of the Democratic Party and democracy itself depends on getting young individuals engaged in the political process.” <https://www.neoybd.org/>
24. Similarly, Plaintiff Hamilton County Young Democrats’ is an organization that supports the Democratic Party. Its mission is to “serve as a collaboration of young adults working to elect strong Democratic leaders in Hamilton County, statewide, and at the federal level.” https://www.facebook.com/pg/HCOYD/about/?ref=page_internal The organization works to “uphold the ideas of life, liberty & the pursuit of happiness for all by supporting the Democratic Party.” *Id.* The organization also makes political contributions to Democratic candidates. <https://www.facebook.com/HCOYD/app/190322544333196/>
25. Moreover, Plaintiff The Ohio State University College Democrats is, among other things, “dedicated to promoting the ideals of the Democratic Party.” https://activities.osu.edu/involvement/student_organizations/find_a_student_org?i=191&l=C&page=4
26. Finally, the ACLU has largely been opposed to the NRCC, NRRT, and Fair Lines America’s position. The ACLU has been opposite of the NRCC in all redistricting cases except *Benisek v. Lamone*. The ACLU supports Democratic Party candidates and causes. <https://www.newyorker.com/news/news-desk/the-aclu-is-getting-involved-in-elections-and-reinventing-itself-for-the-trump-era>
27. Disclosing documents to attorneys at Covington and Burling and the ACLU, as well as Democratic Party Plaintiffs chills my speech and will drastically alter and adversely affect how I communicate in the future. This is because my mental impressions and analyses will be disclosed to the very attorneys and political organizations who are and will likely continue to be adverse in litigation, advising individuals throughout the 2020 redistricting process, and campaigns against the NRRT and the NRCC. This directly frustrates the NRCC’s, Fair Lines America’s, and NRRT’s ability to pursue their legal and political goals effectively since our political and legal adversaries would know our strategy. This is especially true since I, the NRRT, NRCC, and Fair Lines America will be conducting similar analysis and strategy in the future.

I declare under pain and penalty of perjury that the foregoing is true and correct.

Executed on December 12, 2018



Adam Kincaid